

A silver metal spiral binding is visible on the left side of the page, looping through a series of holes.

USA Patriot Act Update: The Forfeiture and Money Laundering Amendments

New law: 18 U.S.C. § 981(a)(1)(G)

The following property is subject to forfeiture to the United States:

All assets, foreign or domestic of any individual, entity, or organization engaged in planning or perpetrating any act of domestic or international terrorism against the United States, citizens or residents of the United States, or their property, and

all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

* * *



IEEPA

The International Emergency Economic Powers Act
(50 U.S.C. § 1702 *et seq.*)

OFAC

The Office of Foreign Asset Control, Department of the
Treasury

Forfeiture of Proceeds of Foreign Crimes and Facilitating Property

18 U.S.C. § 981(a)(1)(B):

Authorizes the forfeiture of –

- any property, real or personal, within the jurisdiction of the United States,
- constituting any proceeds or any property used to facilitate
- an offense against a foreign nation,
- listed in section 1956(c)(7)(B);
- for which the punishment is more than 1 year.

Forfeiture for Form 8300 Violations

Forfeiture for title 31 offenses is now in 31 U.S.C. § 5317(c):

- civil and criminal forfeiture for violations of 31 U.S.C. §§ 5313, 5316, or 5324
- includes conspiracies to commit those offenses

Section 5324(b) makes it an offense to:

- cause a trade or business to fail to file a Form 8300
- cause a trade or business to file a false Form 8300
- structure a transaction to evade filing a Form 8300

Civil Forfeiture for Section 1960

18 U.S.C. § 981(a)(1)(A):

The following property is subject to forfeiture to the United States:

Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, ~~or~~ 1957, **or 1960** of this title, or any property traceable to such property.

New RICO Predicates

(page 1)

- § 32 (destruction of aircraft or aircraft facilities)
- § 37 (violence at international airports)
- § 81 (arson within special maritime and territorial jurisdiction)
- § 175 or 175b (biological weapons)
- § 229 (chemical weapons)
- § 351 (congressional, cabinet, and Supreme Court assassination and kidnaping)
- § 831 (nuclear materials)
- § 842(m) or (n) (plastic explosives)
- § 844(f)(2) or (3) (arson and bombing of Government property)
- § 844(i) (arson and bombing of property used in interstate commerce)
- § 930(c) (killing during an attack on a Federal facility)
- § 956(a)(1) (conspiracy to murder, kidnap, or maim persons abroad)
- § 1030(a)(1) and (5)(A)(i) (protection of computers)
- § 1114 (killing or attempted killing of officers and employees of the United States)
- § 1116 (murder of foreign officials)
- § 1203 (hostage taking)
- § 1362 (destruction of communication lines, stations, or systems)
- § 1363 (injury to buildings within special maritime jurisdiction of the United States)
- § 1366(a) (destruction of an energy facility)

New RICO Predicates

(page 2)

- § 1751(a) (b) (c) or (d) (Presidential assassination and kidnaping)
- § 1992 (wrecking trains)
- § 1993 (terrorist attacks against mass transportation systems)
- § 2155 (destruction of national defense materials, premises, or utilities)
- § 2280 (violence against maritime navigation)
- § 2281 (violence against maritime fixed platforms)
- § 2332 (violence against U.S. nationals occurring outside of the United States)
- § 2332a (use of weapons of mass destruction)
- § 2332b (acts of terrorism transcending national boundaries)
- § 2339 (harboring terrorists)
- § 2339A (providing material support to terrorists)
- § 2339B (providing material support to terrorist organizations)
- § 2340A (torture)
- 42 U.S.C. § 2284 (sabotage of nuclear facilities or fuel)
- 49 U.S.C. § 46502 (aircraft piracy)
- 49 U.S.C. § 46504 (assault on a flight crew with a dangerous weapon)
- 49 U.S.C. § 46505(b)(3) or (c) (explosives on aircraft)
- 49 U.S.C. § 46506 (homicide on aircraft)
- 49 U.S.C. § 60123(b) (destruction of interstate gas pipeline facility)

Foreign Crimes Listed in 18 U.S.C. § 1956(c)(7)(B)

Foreign crimes now included in the definition of “specified unlawful activity”:

- drug offenses
- murder, kidnaping, robbery, extortion, and other crimes of violence
- fraud by or against a foreign bank
- public corruption
- smuggling or export control violations involving munitions
- an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution

18 U.S.C. § 1960

It is an offense to operate a money transmitting business in three circumstances:

- without a State license, whether or not the defendant knew that the operation was required to be licensed
- when the money transmitting business fails to comply with the regulations issued under 31 U.S.C. § 5330, once FinCEN issues those regulations
- when the money transmitter knows that the funds have been derived from a criminal offense or are intended to be used to promote unlawful activity

Bulk Cash Smuggling: 31 U.S.C. § 5332

Elements of the offense:

- concealment of more than \$10,000 in currency or other monetary instruments in any conveyance, article of luggage, merchandise, or other container, or on his person
- intent to evade a currency reporting requirement under section 5316
- attempt to transport or transfer the money across the border

Bulk Cash Smuggling: 31 U.S.C. § 5332

Penalty:

- 5 years, and
- forfeiture of the money and
- any article, container, or conveyance used, or intended to be used, to conceal or transport the currency, and
- any other property used, or intended to be used, to facilitate the offense

18 U.S.C. § 1956(i)

Venue

- *United States v. Cabrales*, 524 U.S. 1 (1998) (money laundering case must be prosecuted where the financial transaction takes place; but the transaction could be a continuing offense that begins in one district and ends in another)

Section 1956(i) now allows the prosecution to occur –

- where the financial transaction occurred;
- where an act in furtherance of a conspiracy occurred;
- where the SUA occurred, if the defendant participated in the transfer of the money from that district to the district where the transaction occurred
- “participating in the transfer” includes being the receiver of a wire transfer